

Office of the Secretary, Interior

§ 4.324

administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems this action appropriate. If, before a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the OHA Director will determine the matter of disqualification.

§ 4.318 Scope of review.

An appeal will be limited to those issues that were before the administrative law judge or Indian probate judge upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the BIA official on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board will not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

APPEALS TO THE BOARD OF INDIAN APPEALS IN PROBATE MATTERS

SOURCE: 70 FR 11826, Mar. 9, 2005, unless otherwise noted.

§ 4.320 Who may appeal a judge's decision or order?

Any interested party has a right to appeal to the Board if he or she is adversely affected by a decision or order of a judge under part 30 of this subtitle:

- (a) On a petition for rehearing;
- (b) On a petition for reopening;
- (c) Regarding purchase of interests in a deceased Indian's trust estate; or
- (d) Regarding modification of the inventory of a trust estate.

[73 FR 67288, Nov. 13, 2008]

§ 4.321 How do I appeal a judge's decision or order?

(a) A person wishing to appeal a decision or order within the scope of § 4.320 must file a written notice of appeal within 30 days after we have mailed the judge's decision or order and accurate

appeal instructions. We will dismiss any appeal not filed by this deadline.

(b) The notice of appeal must be signed by the appellant, the appellant's attorney, or other qualified representative as provided in § 1.3 of this subtitle, and must be filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

[73 FR 67288, Nov. 13, 2008]

§ 4.322 What must an appeal contain?

(a) Each appeal must contain a written statement of the errors of fact and law upon which the appeal is based. This statement may be included in either the notice of appeal filed under § 4.321(a) or an opening brief filed under § 4.311(a).

(b) The notice of appeal must include the names and addresses of the parties served.

[73 FR 67288, Nov. 13, 2008]

§ 4.323 Who receives service of the notice of appeal?

(a) The appellant must deliver or mail the original notice of appeal to the Board.

(b) A copy of the notice of appeal must be served on the judge whose decision is being appealed, as well as on every other interested party.

(c) The notice of appeal filed with the Board must include a certification that service was made as required by this section.

[73 FR 67288, Nov. 13, 2008]

§ 4.324 How is the record on appeal prepared?

(a) On receiving a copy of the notice of appeal, the judge whose decision is being appealed must notify the agency concerned, which must return the duplicate record filed under subpart J of part 30 of this subtitle to the designated LTRO.

(b) The LTRO must conform the duplicate record to the original. Thereafter, the duplicate record will be available for inspection either at the LTRO or at the agency.

(c) If a transcript of the hearing was not prepared, the judge must have a transcript prepared and forwarded to